IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10098 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPSINH SIDUBHA JADEJA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ANSHIN H DESAI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PRASHANT MANKAD for Respondent(s) : 2,
MR JAGDISH H MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/10/2007

ORAL JUDGMENT

1. In the present application, the original accused has prayed for quashing of a criminal complaint

bearing C.R. NO.I-254/2001 filed before Jamkhambhalia police station by respondent no.2 herein on 14.12.2001.

2. Briefly stated allegations in the complaint are that the complainant through sale and inheritance acquired certain agricultural lands in village Danta. Since he required money to grow potatoes in his field, he borrowed a sum of Rs.20,000/- from one Amrutlal Popatlal in the year 1990 by mortgaging his land bearing survey no.89 with a Well on the land. Since he could not repay the amount within the time agreed, Amrutlal Popatlal gave the mortgage deed to Shri Pratapsinh Sidubha, giving right of recovery of the money to Shri Pratapsinh Sidubha. After two years, Shri Pratapsinh Sidubha demanded a sum of Rs. 1,70,000/- which according to him included 10% compound interest on the principal. The complainant paid a sum of Rs.70,000/- but could not repay the rest. Therefore, on 10.11.1993, the accused along with his accomplish visited the complainant on his agricultural land and threatened him that if he did not repay the amount, they will ruin him and his family. The complainant and his wife were extremely scared. They were thereupon taken to the office of the Sub Registrar and their signatures were obtained on Stamp papers evidencing sale of the lands of the complainant. On this basis, the complainant alleged that the

accused had committed offences punishable under Sections 385, 504 and 114 of the Indian Penal Code and Sections 5,9,33 and 34 of the Bombay Money Lenders Act. It is the case of the applicant advanced through his learned advocate that the complaint is barred by limitation provided under Section 468 of the Criminal Procedure Code. It is contended that the dispute is purely of civil nature.

2.1 It is further submitted that respondent no.2 has not initiated any Civil Suit to establish his rights. It was pointed out that many years after the sale deed was registered and entries to that effect made in the revenue records, respondent no.2 sought to challenge the same and upto the level of High Court, challenge has been turned down.

3. Having heard the learned advocates appearing for the parties and having perused the material on record, it will appear that the complaint in question is clearly barred by limitation as provided under Section 468 of the Criminal Procedure Code. It is not in dispute that offence punishable under Section 385 of the Indian Penal Code carries a maximum punishment of two years and fine. Section 504 of the Indian Penal Code is punishable with maximum of two years with fine. It is also not in dispute that the offences punishable under the Bombay Money

Lenders Act, do not carry any sentence higher than a period of two years.

4. In that view of the matter, as per the provisions contained in Section 468(2) of the Criminal Procedure Code, maximum period of limitation for filing the complaint alleging the above-mentioned offences would be three years from the date of commission of the offence. Any complaint lodged thereafter, is barred by limitation and no Court is authorised to take cognizance of a complaint alleging such offences.

5. Under Section 469(1)(b), it is provided that the period of limitation shall commence where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or police officer whichever is earlier.

5.1 Under Section 469(1)(c), it is provided that limitation in relation to the offence shall commence where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or police officer making investigation into the offence, whichever is earlier.

6. In the present case, the complaint clearly reveals that the complainant had from the very outset the knowledge about the offences being committed and the culprits of commission of such offence. In that view of the matter, the complainant cannot take benefit of the provisions contained in Section 469(1)(b) and (c).

7. Since it is apparently, clear that the complaint is barred by limitation, no useful purpose would be served in permitting the investigation to be completed since eventually no Court can take cognizance of such a complaint. It is necessary to note at this stage that the only allegation made by the complainant against the applicant to extort his land and property was that they had threatened him and his wife that if they do not transfer the lands they will ruin the family. This allegation clearly pertains to offence punishable under Section 385 of the Indian Penal Code and not any aggravated form of extortion which prescribes higher punishment.

8. In the result, I have no hesitation in allowing this application. The complaint at Annexure-A is quashed. Rule is made absolute.

(Akil Kureshi,J.)

(raghu)